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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 291

UNION BROKERAGE COMPANY, A CORPORATION,
Petitioner,

vs.

NORMAN G. JENSEN AND CURTIS M. RIME.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA AND BRIEF IN SUPPORT THEREOF.

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STATUTES CITED.

Constitution of Minnesota, Sec. 1, Article VI 29
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OTHER AUTHORITIES CITED.

25 C. J. S. p. 248, par. 89, Customs Duties 36
25 C. J. S. p. 254, par. 97, Customs Duties 36
Rules and Regulations Relating to Customhouse Brokers, U. S. Treasury Dept., April 16, 1936, Department Circular No. 559 4,19

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 291

UNION BROKERAGE COMPANY, A CORPORATION,
Petitioner,

vs.

NORMAN G. JENSEN AND CURTIS M. RIME.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Union Brokerage Company, a North Dakota corporation, prays for a writ of certiorari herein to review the final decision and judgment of the Supreme Court of the State of Minnesota, said decision having been rendered on May 14, 1943, and said judgment having been entered on May 25, 1943, in the above entitled cause.

I.

Questions Presented.

Conceding that the State of Minnesota may impose such restrictions as she may see fit as prerequisite conditions for allowing a foreign corporation to come into the State

to do business therein where the business of such corporation has no substantial relation to interstate or foreign commerce, the following questions are presented:

1. Where, as here, a corporation, organized under the laws of North Dakota, is engaged in the business of customhouse broker under license granted by the United States Treasury Department, pursuant to an Act of Congress, for a United States customs collection district embracing the States of North Dakota, South Dakota, and one county of the State of Minnesota, Kittson County, may the State of Minnesota by judicial decree or statute law, deny to such a customhouse broker access to her courts within said territory, for the protection of its property, because of its failure to comply with a statute which provides that a foreign corporation can not bring an action in the courts of Minnesota without a Certificate of Authority to do business therein?

2. Do the requirements of the Minnesota Foreign Corporation Act burden or obstruct "commerce", within the purview of clause 3, sec. 8, Art. I of the Constitution of the United States, when applied so as to forbid customhouse brokers from the use of her courts without complying with the provisions of the Minnesota Foreign Corporation Act?

3. May the State of Minnesota impair or limit the right of the Petitioner, which is a North Dakota corporation duly licensed to engage in the business of a customhouse broker, to exercise freely the privileges arising from its Federal license as a customhouse broker, in that part of the district which lies within the borders of Minnesota?

4. By deciding that Petitioner must comply with the provisions imposed by the Minnesota Foreign Corporation Act, (Ch. 200, Laws of Minnesota, 1935; Sec. 303.03, 303.06, 303.7, 303.10 to 303.14, both inclusive, 303.16, 303.17, 303.18, 303.20 and 303.21 of Minnesota Statutes, 1941; 7495-2, 7495-4 to 7495-17, 7495-20 and 7495-21, Mason's Minnesota

Statutes, 1927, Vol. 3, 1938 Supp.) before it may have access to the courts of Minnesota for judicial relief, is the Petitioner denied the privileges and immunities guaranteed by clause 1, of Sec. 2, Art. IV, of the Constitution of the United States?

5. Is the ruling of the Supreme Court of Minnesota an interference with, and an attempt to nullify, an Act of Congress enacted to protect the revenue of the United States and her commerce with a foreign country?

6. Is a Federally licensed customhouse broker an instrumentality employed by the Government of the United States to facilitate the free flow of commerce between foreign countries and the United States, and to protect the revenue of the Federal Government?

7. By deciding that Petitioner must comply with the provisions imposed by the Minnesota Foreign Corporations Act (Ch. 200, Laws of Minnesota, 1935) before it may appeal to her courts for judicial relief, has the Petitioner been denied the privileges and immunities guaranteed by the Constitution of the United States?

II.

Summary Statement of the Matter Involved.

Your petitioner seeks to have this Court review the decision of the Supreme Court of Minnesota in the case entitled:

"33388

UNION BROKERAGE COMPANY, a Corporation,
Respondent,

vs.

NORMAN G. JENSEN and CURTIS M. RIME, Appellants"

Handed down on May 14, 1943, as yet unreported in the official Minnesota Reports, but reported in 9 N. W. (2) p.

721, reversing the judgment of the District Court, Kittson County, 14th Judicial District of Minnesota, entered on August 20, 1942. (Fol. 3 and pp. 722, 723 and f. 1, p. 724, R.)

The judgment of the District Court adjudged that Petitioner recover from Respondents $10,324.80 and that the Respondents surrender and deliver to Plaintiff (Petitioner) "all books of account, correspondence, claims for rebates and other records and files pertaining to the business conducted at Noyes, Minnesota, from the beginning thereof on July 1, 1940 to and including the 30th day of November, 1941, and that they, and each and both thereof, assign to plaintiff all claims for rebates, commissions, fees or other income due, or to become due on account of business so conducted prior to and including the 30th day of November, 1941, and upon the assumption of liability on the part of plaintiff for any amount that is due, or may become due, for underpayments of money due, or to become due, the United States Government on account of said business." (Lines 14-19, p. 723 R.)

Your Petitioner is, and has been at all times covered by this action, a customhouse broker as the term is defined in Sec. 2 (a) of the "Rules and Regulations Relating to Customhouse Brokers," being Department Circular #559, dated April 16, 1936, and filed with the Division of the Federal Register, April 20, 1936, 9:48 a. m. (Par. 2, of the District Court's Findings of Fact, p. 697, R.; Lines 18 to the end of the sentence in line 26, p. 728, R.; Exhibit "A".)

The Secretary of the Treasury has defined a customhouse broker to include "any person, who, acting on behalf of others, transacts customs business not limited to a kind described in Sec. 7, of these regulations," and "person" to include "corporations, associations and partnerships." (Sec's 2(a), (d); Exh. "A".)

Congress has authorized the creation by the President of 48 Customs Collection Districts in the United States, includ-

ing Alaska, Hawaii, and Puerto Rico. Each of these Customs Collection Districts has been geographically defined and the district involved in this action is the "Dakota" Customs Collection District, also identified as District #34. This Customs Collection District includes within its area the States of North and South Dakota and the County of Kittson, in the State of Minnesota. (Par. 7 of Findings of Fact of the District Court, p. 699 R.; Sec. 2, Title 19, U. S. C. A. together with historical note.)

Your petitioner's license during the times involved in this action covered all of this Customs Collection District. Thus its license was valid in a part of the State of Minnesota.

Your petitioner is a North Dakota Corporation. (Par. 1, of the District Court's Findings of Fact, p. 697, R.; lines 3 and 4, p. 733, R.)

It has not procured a license to do business in Minnesota under its Foreign Corporation Act. (Ch. 200, Laws of Minnesota, 1935; Sec. 7495-1 and 7495-20, Mason's Minnesota Statutes, 1927, Vol. 3, 1938 Supp.; Ch. 303, Vol. I, Minnesota Statutes, 1941.)

In 1941 plaintiff brought this action in the District Court, Kittson County, Minnesota.

This action is a transitory action and the venue thereof was laid in the Minnesota County which was included as a part of United States Customs Collection District covered by petitioner's license.

The District Court of Minnesota, over Respondents' objection, accepted jurisdiction over this cause and over the parties thereto, tried the cause on its merits, made findings of fact and awarded judgment in favor of Petitioner and against the Respondents for the relief heretofore stated. (Ff. 2, 3, P. 696; pp. 697-718; First 4 lines p. 719 R.)

The Supreme Court of Minnesota reversed the decision and judgment of the district court and held, in effect, that petitioner as a Government licensed customhouse broker

is not an instrumentality employed to facilitate the flow of foreign commerce, that its customhouse brokerage business is local in character and not interstate commerce, and, consequently, since it was a foreign corporation without a certificate of authority to do business in Minnesota under her Foreign Corporations Act, it could not use her courts, and that the District Court was without jurisdiction. (Opinion printed in full, p. 727, R.)

The Supreme Court, in its opinion reversing the lower Court, said among other things:

> "Defendant's first assignment of error raises the question of the power of the State of Minnesota to require plaintiff, by statutory regulation, to obtain a certificate of authority before bringing an action in the courts of this state • • • (p. 732 R.)
>
> Plaintiff is a North Dakota corporation and has not complied with this requirement. The lower court found "that the customhouse brokers, involved herein, are established (fol. 735) as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada." (First Par. 733, R) • • •
>
> The broker acts as an independent contractor to perform his personal service for the shipper. He does not come into contact with the commerce itself in any way insofar as its actual movement is concerned. He is at the most an aid or facility to the commerce and but remotely, if at all, affects it. We fail to see how such broker is an instrumentality of the commerce. Therefore, it seems to us that the statutory requirement is not an obstruction or interference with interstate commerce. (Last par. p. 738, ending on p. 739, R.)
>
> The provisions of this statute (Minn. Foreign Corporations Act) require foreign corporations to obtain a certificate of authority as a prerequisite to maintaining an action in the courts of this state. We believe that this is a reasonable requirement, and not a hard-

ship upon the business. Nor do we think that it is an obstruction upon the commerce itself, nor an interference therewith under the facts in the instant case * * * Where the business so remotely affects the commerce, if at all, we conclude that the statutory requirment is a proper regulation for the state to prescribe, and that the constitutional power of Congress is in no way impaired thereby." (Sentences beginning in the 5th line from bottom of p. 742 and ending p. 743, R.)

This action was brought to secure a decree adjudging that the defendants should account to petitioner for the profits made on the theory that Norman G. Jensen was a constructive trustee, having breached his fiduciary duties owing to Petitioners. (Par. 9, complaint, pp. 9 to 17, R.) Under the charge of conspiracy, Curtis M. Rime was joined as a defendant. In their answer, by their objections raised at the commencement of, and during the trial, and when petitioner rested, the defendants (Respondents here) urged that the trial court was without jurisdiction because petitioner had not obtained a certificate of authority as a foreign corporation to do business in Minnesota, (Par. 1, p. 30; par. 1, pp. 41, 42; lines 3-12, p. 49; Lines 14-26, p. 626; Line 8, p. 626, R.)

Petitioner contended in the district court and in the Supreme Court that because it was a customhouse broker, licensed by the Treasury Department of the United States, and because in conducting its business it facilitated the free flow of commerce between Canada and the United States, and because its license covered part of Minnesota, it was engaged in "commerce" and therefore entitled, as a matter of law, to maintain this action in the Courts of Minnesota without going to the expense, and without submitting to the ordeal, of procuring and maintaining a license under the Minnesota Foreign Corporations Act. (Lines 3-12, p. 49; Par. 1, pp. 41, 42, R.)

The District Court of Minnesota overruled Respondents' (defendants') objections and motions and held that the petitioner was employed as an instrumentality of the United States engaged in the business of protecting the revenue of the United States, the interest of importers and facilitating the free flow of commerce. (Par. 5 of District Court Findings, pp. 698 and 699; Pars. 9 and 10 of District Courts Findings, p. 700; Par. 28, p. 713; Par. 33, pp. 716, 717).

The factual background of this action is:

On September 6, 1938, petitioner, a long established licensed customhouse broker, bought out the business of Norman G. Jensen who, at that time, had been, for about a year, doing business as a licensed individual customhouse broker. (Par. 13, p. 701; District Court's Findings of Fact, #9, 10, 11, 13 and 14, pp. 700-704, and fol. 1, p. 705, R.)

On the consummation of that purchase, Norman G. Jensen was elected to, and accepted, the offices of director, president, treasurer and manager of petitioner. On September 6, 1938, by virtue of those offices he took possession of Petitioner's business and property and continued to hold, and he professed to discharge the duties of those offices until November 5, 1940. (Findings 14, 15, and 17, pp. 702-705, and f. 1, p. 706, R.)

On July 1, 1940, the Canadian Pacific Railway which was the only carrier entering Portal, North Dakota (the home office of the petitioner) effected a change in the routing of its freight shipments from Canada into the United States, so that after July 1, 1940, 95 per cent, or more of its freight shipments, transported from Canada for Petitioner's clients, had to be "entered" through the Port of Noyes. Each of these "Ports" is within District #34. (Findings 20-24, pp. 707-710, and 1st 3 lines p. 711, R.).

Taking advantage of his advance information about this change in the routing of shipments by the C. P. R., Norman

G. Jensen followed Petitioner's business from Portal, North Dakota, to Noyes, Minnesota, while yet the president and manager of petitioner and its business, but not for his principal. He followed it to convert Petitioner's business to himself and for his own profit. The judgment of the district court, less the costs taxed in the lower court, represents the net profits found to have been realized by the Respondent for a period of 17 months next following July 1, 1940. (Finding 26, p. 712; Finding 29, pp. 714, 715, R.)

In conducting the business at Noyes, Minnesota, Norman G. Jensen used the broker's license which he possessed as one of the officers of the Petitioner. He appointed Curtis M. Rime, *his* agent, by executing in his favor, and filing with the Collector of Customs, a power of attorney authorizing Curtis M. Rime to "clear" shipments consigned to Petitioner, for *him* in his name. He provided for his agent a stamp bearing the name of Norman G. Jensen for use in effecting the alteration of the bills of lading designating the Petitioner as "broker." When the bills of lading, designating Petitioner as the broker, reached Noyes, Minnesota, or Emerson, Manitoba, they were detached from the waybills, and these carrier's certificates were substituted, on which Norman G. Jensen's name was stamped. The bills of lading consigning the shipments to Petitioner, as broker, were thus destroyed. Carrier's certificates were substituted for those bills of lading, and they were presented to the customs officials at Noyes as authority for Norman G. Jensen or his agent to "clear" these shipments originally consigned to Petitioner, as broker by the original bills of lading which had been detached and substituted with carrier's certificates. Many thousands of shipments shipped from Canada into the United States and subject to "clearance" at Noyes are involved in this action. (Last 2 lines, p. 729; p. 730 to "(fol. 732)", R.)

On the day of his resignation, November 5, 1940, Norman G. Jensen reported to the stockholders and directors that the useful and usable brokerage records of the Petitioner had disappeared.

The broker on presenting the bill of lading is authorized to "clear" shipments of merchandise through customs, and pay the duty determined by the Collector. When this has been done the shipments are released from "customs" and proceed on their journey to the ultimate consumer or consignee in the United States over the carrier which becomes the outgoing carrier.

The Tariff Act of 1930, as amended, authorizes the use of carrier's certificates where the bills of lading have been lost or so mutilated as to make the bills of lading unusable. (Exhibit "A")

The Tariff Act of 1930, as amended, and the Rules and Regulations, Exhibit "A", authorize the broker under the supervision and control of the Treasury Department to act for the shipper and the importer in "clearing" shipments of goods arriving in foreign commerce at a Port of Entry.

Each importer may appear at the Port of Entry and "Clear" the goods imported by him. ("Sec. 7, Exhibit A")

The broker, pursuant to the Tariff Act of 1930, as amended, and the Rules and Regulations "Exhibit "A" is personally liable for the duty levied against each shipment and for the payment of any additional duty which may be found to be required where the duty originally levied is insufficient or incorrectly assessed. To insure the Government against loss the broker is required to furnish one or more bonds, ranging in amount from $10,000.00 up. These bonds must be approved by the Collector before they are accepted, and are given to insure the Government against loss of duty from incorrect or insufficient assessments. (Exh. "A".)

The importer electing to "clear" his own shipments must comply with the requirements imposed on a broker before his shipment can be cleared since the Collector of Customs is by law immune from liability. (Sec. 1513 Title 19, U. S. C. A.)

The result is that the broker is relied on by the Government for protection of the public revenues and that he acts as the authorized agent in expediting the shipment of goods from Canada to importers residing in the United States. Without his services, as defined and authorized by the Tariff Act of 1930, as amended, the Port of Entry, and the yards of incoming and outgoing carriers, would become blocked for miles with freight cars filled with goods coming from Canada. The revenue of the United States would then be jeopardized, interminable delay in the movement of trains would follow if the shipments were left to depend upon the arrival of the ultimate consignee. The importer's appearance to clear his shipment at the Port of Entry might be delayed by accident, sickness and by inability to furnish the bond required by the Government.

The railroad car carrying the shipment is not permitted to leave the custody of the Collector of Customs until the shipment has been "cleared."

Fact Summary

The precise situation, then, is this:

Petitioner, a United States Customhouse Broker, duly licensed as such for customs collection district No. 34, embracing a county in Minnesota within its territory, found that its president and manager had converted its business to himself by setting up its business at the Port of Noyes when it became necessary to follow petitioner's business to that Port, due to the change in routing shipments from Canada into the United States through Noyes, instead of

Portal, North Dakota. Thereupon petitioner brought this action in district court of Kittson County, Minnesota, to secure an accounting from him and his agent.

The respondents objected that the courts of Minnesota had no jurisdiction because petitioner had not obtained a certificate of authority to do business in Minnesota under the provisions of the Minnesota Foreign Corporations Act.

The district court over-ruled these objections, decided the case on its merits and awarded judgement against the respondents, holding that petitioner was engaged in interstate commerce and facilitated the free flow of commerce between the Dominion of Canada and the United States.

On appeal to the Supreme Court of Minnesota the latter Court ruled that Petitioner's business as customhouse broker was local in character, had no substantial relation to interstate or foreign commerce, and that therefore the Court was without jurisdiction in the absence of a certificate of authority to do business in Minnesota.

The judgement awarded to Petitioner in the district court was thereupon striken down on the theory adopted and applied by the Supreme Court of Minnesota.

Therefore, the ultimate issue is:

Does the customhouse broker function as a factor or instrumentality in the administration of the tariff revenue system, enacted by Congress and executed by the Treasury Department of the United States:

Is he employed as an instrumentality to secure the protection of the revenue of the United States and to facilitate the free flow of foreign commerce, and therefore engaged in "commerce" within the purview of cl. 3, Sec. 8, Art. I of the Constitution of the United States?

If he is, and even if he is not, is he, in discharging the duties prescribed and defined by the Tariff Act of 1930,

as amended, and by the Rules and Regulations of the Treasury Department Relating to Customhouse Brokers engaged in business so closely and substantially related to foreign commerce that he is engaged in commerce, and that therefore the state cannot interfere with, nor obstruct, his activities?

Do the restrictive provisions of the Minnesota Foreign Corporations Act, as interpreted and applied in the instant case, "obstruct" or lay a burden on "commerce" within the purview of cl. 3, sec. 8, Art I of the Constitution of the United States?

III.

Jurisdictional Statement.

Petitioner relies upon the following to sustain the jurisdiction of this Court.

(a) The United States Judicial Code, Sec. 237 (b), 28 U. S. C. A. Sec. 344 (b), as amended.

(b) There is involved the validity and construction of the Minnesota Foreign Corporation Act in relation to the business of a Federally licensed Customhouse Broker, operating in U. S. Customs Collection District 34, said Act being Ch. 303 of Vol. 1, Minn. Stat. 1941, pp. 2260 to 2268; Sec's. 7495-2 to 7495-26, Vol. 3, 1938 Supp., Mason's Minn. Stat. 1927, both of which are official editions.

The material and relevant sections of the Minnesota Foreign Corporation Act, involved here, provide:

> "303.03. Foreign Corporations Must Have Certificate of Authority. No foreign corporation shall transact business in this state unless it holds a certificate of authority so to do; and no foreign corporation whose certificate of authority shall have been revoked or cancelled pursuant to the provisions of this chapter shall be entitled to obtain a certificate of authority

except in accordance with the provisions of section 303.19."

"303.06. APPLICATION FOR CERTIFICATE OF AUTHORITY. 1. CONTENTS. In order to procure a certificate of authority to transact business in this state, a foreign corporation shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) If the name of the corporation does not end with the word "Corporation" or the word "Incorporated", or the abbreviation "Inc.," or does not contain the word "Company" or the abbreviation "Co." not immediately preceded by the word "and" or the character "&", then the name of the corporation with the word or abbreviation which it agrees to add thereto for use in this state;

(3) The date of its incorporation and the period of its duration;

(4) The address of its principal office in the state or country under the laws of which it is organized;

(5) The address of its proposed registered office in this state and the name of its proposed registered agent in this state;

(6) That it irrevocably consents to the service of process upon it as set forth in Section 303.13, or any amendment thereto;

(7) The names and respective addresses of its directors and officers;

(8) A statement of the aggregate number of shares having par value and of shares without par value which it shall have authority to issue, itemized by classes and series;

(9) A statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series; and

(10) A statement that the officers executing the application have been duly authorized so to do by the Board of Directors of the corporation * * *."

"303.07. INITIAL LICENSE FEE. At the time of making application for a certificate of authority the foreign corporation making such application shall pay to the state treasurer the sum of $50.00 as an initial license fee."

"303.10. OFFICE AND AGENT.

Subdivision 1. MAINTENANCE. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which shall be in a county where it has its principal place of business in this state or, if it has no place of business in this state, then in any county where it does or proposes to do business;

(2) A registered agent, which agent may be either an individaul, resident in this state, whose business office is identical with such registered office, or a corporation having a business office identical with such registered office * * *."

"303.14. ANNUAL REPORT. Subdivision 1. Filed with the Secretary of state; contents. Between January first and April first, in each year, every foreign corporation which holds a certificate of authority shall make and file with the secretary of state a report for the next preceding calendar year, setting forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) If the name of the corporation does not end with the word "Corporation" or the word "Incorporated," or the abbreviation "Inc.", or does not contain the word "Company" or the abbreviation "Co." not immediately preceded by the word "and" or the character "&", then the name of the corporation with the word or abbreviation which it has agreed to add thereto for use in this state;

(3) The date of its incorporation and the period of its duration;

(4) The address of its principal office in the state or country under the laws of which it is organized;

(5) The address of its registered office in this state and the name of its registered agent at such address;

(6) The names and respective addresses of its directors and officers;

(7) A statement of the aggregate number of shares having par value and of shares without par value which it has authority to issue, itemized by classes and series;

(8) A statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series;

(9) A statement expressing in dollars the value of all the property owned by the corporation, wherever located, and the value of all its property located within this state;

(10) A statement expressing in dollars the gross receipts of the corporation in such calendar year derived from its business operations wherever transacted, and the gross receipts of the corporation in such calendar year derived from its business operations transacted, in whole or in part, within this state; and

(11) Such additional information as may be necessary or appropriate to enable the secretary of state to determine the additional license fee, if any, payable by such corporation.

The information required by clauses (7) to (9) of this subdivision shall be given as of the close of the next preceding calendar year * * *."

"303.20. FOREIGN CORPORATION MAY NOT MAINTAIN ACTION UNLESS LICENSED. No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain an action in any

court in this state until such corporation shall have obtained a certificate of authority; nor shall an action be maintained in any court by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority to transact business in this state shall have been obtained by such corporation or by a corporation which has acquired all, or substantially all, of its assets. If such assignee shall be a purchaser without actual notice of such violation by the corporation, recovery may be had to an amount not greater than the purchase price. This section shall not be construed to alter the rules applicable to a holder in due course of a negotiable instrument.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action in any court of this state.

Any foreign corporation which transacts business in this state without a certificate of authority shall forfeit and pay to this state a penalty, not exceeding $1,000, and an additional penalty, not exceeding $100.00 for each month or fraction thereof during which it shall continue to transact business in this state without a certificate of authority therefor. Such penalties may be recovered in the district court of any county in which such foreign corporation has done business or has property or has a place of business, by an action, in the name of the state, brought by the attorney general."

"303.21. FEES. The secretary of state shall charge and receive the following fees for the following services:

(1) For filing an application for a certificate of authority, $5.00;

(2) For filing an annual report, $5.00;

(3) For filing articles of amendment or an instrument evidencing a reduction of stated capital, or a merger or consolidation, $2.00;

(4) For filing application for withdrawal and final report, $5.00;

(5) For filing a change of address of registered office or revocation or change of appointment of a registered agent, $1.00;

(6) For filing an application for reinstatement of a certificate of authority, $5.00;

(7) For issuing any certificate pursuant to the provisions of this chapter, $2.00.

In addition thereto, in each instance in which he is required by this chapter to transmit a certificate to a register of deeds for record, the secretary of state shall charge and receive $1.00 for recording such certificate with the register of deeds."

The Minnesota Foreign Corporation Act was originally adopted as the "Somerville Law", Ch. 69, Laws of Minnesota, 1899. This statute was construed by the Supreme Court of Minnesota in 1904 in the case of *Rock Island Plow Company* v. *Peterson*, 93 Minn. 356, 359, 191 N. W. 616. In that case the Supreme Court of Minnesota said:

"This statute was not intended to interfere with interstate commerce, for it is beyond the power of the legislature to enact laws prohibiting *or restricting* parties engaged in that sort of business. But was intended to apply exclusively to foreign corporations doing business within our borders, as distinguished from interstate commerce." (Italics supplied.)

The rule established in that case was followed by the Supreme Court of Minnesota in the following cases:

Victor Talking Machine Co. v. *Lucker*, 128 Minn. 171, 150 N. W. 790.

Thomas Mfg. Co. v. *Knapp*, 101 Minn. 432, 112 N. W. 989.

Defender Auto Lock Co. v. *Schmelzel Co.*, 157 Minn. 285, 196 N. W. 263.

(c) There is involved the construction and application of the Act of Congress authorizing the President of the United States to establish customs collection district No. 34, known as "District of Dakota" and which includes and embraces all of the States of North Dakota, South Dakota and the County of Kittson in the State of Minnesota, lying north of the 46th degree of north latitude (Vol. 6-a, F. C. A., 19 U. S. C. A., Sec 2).

(d) There is involved the construction of Tariff Act of 1930, Sec. 641, 19 U. S. C. A., Sec. 1641 (a) and (d); Title IV, p. 481, 46 Stat. 719, Sec. 1481, Title 19, U. S. C. A.; Title IV, p. 482, 46 Stat. 720, Sec. 1482, Title 19, U. S. C. A.; Title IV, p. 483, 46 Stat. 721, Sec. 1483, Title 19, U. S. C. A.; Title IV, p. 484, 46 Stat. 722, Sec. 1484, Title 19, U. S. C. A.; Title IV, p. 485, 46 Stat. 724, Sec. 1485, Title 19, U. S. C. A.; Title IV, p. 490, 46 Stat. 726, Sec. 1490, Title 19, U. S. C. A.; Title IV, p. 505, 46 Stat. 732, Sec. 1505, Title 19, U. S. C. A. as amended.

(e) There is involved the construction and validity of "Rules and Regulations Relating to Customhouse Brokers" issued by the United States Treasury Department, Office of the Secretary, Washington, April 16, 1936, Department Circular No. 559, (Filed with the Division of the Federal Register, April 20, 1936, 9:48 a. m.) as amended.

The parts of said Rules and Regulations here material provide:

> "By virtue of and pursuant to the authority vested in me, including the authority conferred by section 641 of the Tariff Act of 1930, as amended, the following regulations are hereby promulgated: Sec. 1, LICENSES

FOR BROKERS REQUIRED—QUALIFICATIONS—REGULATIONS AUTHORIZED—(a) Triff Act of 1930, section 641 (a), as amended:

• • • Except as provided in subdivision (c) of this section, no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of this subdivision, but nothing in this section shall be construed to authorize the requiring of a license in the case of any person transacting at a customhouse business pertaining to his own importations. (Aug. 26, 1935, Ch. 689, sec. 3, 49 Stat. 864) (19 U. S. C. A., Sec. 1641 (a)).

(b) No representative of the Treasury Department shall recognize or deal with any person transacting the business of a customhouse broker, or any employee, officer, or agent thereof, unless such person is licensed as a customhouse broker in accordance with the provisions of these regulations.

(c) Tariff Act of 130, section 641 (a); (19 U. S. C. A., Sec. 1641 (a)): The Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters. No such license shall be granted to any corporation, association, or partnership unless licenses as customhouse brokers have been issued to at least two of the officers of such corporation or association, or two of the members of such partnership, and such licenses are in force. • • •

(d) Tariff Act of 1930, section 641 (d), 19 U. S. C. A. Sec. 1641 (d), as amended:

The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States,

and to carry out the provisions of this section . . .
(Aug. 26, 1935, ch. 689, sec. 4, 49 Stat. 865)

Sec. 2. DEFINITIONS—When used in these regulations —(a) CUSTOMHOUSE BROKER—The term "customhouse broker" includes any person who, acting on behalf of others, transacts customs business not limited to a kind described in section 7 of these regulations.

(b) TREASURY DEPARTMENT OR ANY REPRESENTATIVE THEREOF—The term "Treasury Department or any representative thereof" includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office or unit.

(d) PERSON,—The word "person" includes corporations, associations, and partnerships.

(e) BOOKS AND PAPERS—The term "books and papers" includes all books, accounts, records, papers, documents, and correspondence of a customhouse broker relating to his customs business.

Sec. 3. APPLICATION FOR LICENSE AND INVESTIGATION OF APPLICATION—(a) A person desiring to engage in the business of a customhouse broker shall submit an application to the Committee, stating his qualifications for a license. The application shall be under oath and in such standard form as the Committee, with the approval of the Secretary, shall have prescribed,

(d) . . . In the case of a corporation, association, or partnership, the application will be rejected by the Committee unless it appears that the officers or members who are licensed customhouse brokers are to exercise responsible supervision and control of the transaction of the customs business of such corporation, association, or partnership. An individual who is unable for any reason to take the oath of allegiance and to support the Constitution of the United States shall not be licensed . . .

Sec. 4. ISSUANCE OR DENIAL OF LICENSE—(a) If the Committee finds that the applicant is qualified, the Committee will issue a license in such standard form as the Committee, with the approval of the Secretary of the Treasury, shall have prescribed. The license shall be forwarded to the appropriate collector of customs, who shall deliver it to the licensee after making a record thereof in a roster of licensed brokers which shall be maintained in the customhouse in such manner that it will be readily accessible to the proper customs officers and employees.

Sec. 8. BOOKS AND PAPERS—(a) Tariff Act of 1930, section 641 (d), as amended:

The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by customhouse brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States. (Aug. 26, 1935, ch. 689, sec. 4, 49 Stat. 865.)

(b) Each licensed customhouse broker shall maintain correctly and in orderly itemized manner, and keep current, records of account reflecting all his financial transactions as a customhouse broker. He shall keep and maintain on file a copy of each entry made by him, and copies of all his correspondence and other papers relating to his customs business.

(g) All of the books and papers required by the foregoing provisions of this section shall be kept on file for at least five years and maintained in such manner that they may readily be examined. Any or all of such books and papers shall be made available to duly accredited agents of the United States on demand therefor, within five years after their preparation or receipt

by the broker, or within such longer period of time during which they remain in the possession of the broker. The broker shall also furnish such additional information regarding his activities as a licensed customhouse broker as such agents may require.

Sec. 9. Other Duties and Obligations of Licensed Customhouse Brokers—(a) The duties and obligations specified in this section and elsewhere in these regulations relating to customhouse brokers are not to be construed as exclusive, since the Secretary of the Treasury may deem conduct not within the purview of any specification in these regulations to be such as would also warrant the suspension or revocation of a license under the authority conferred upon him by section 641 of the Tariff Act of 1930, as amended.

(b) No licensed customhouse broker shall permit his license or his name to be used by or for any unlicensed person, or by or for any broker whose license is under suspension, in the solicitation, promotion, or performance of any customs business or transaction.

(c) No licensed customhouse broker shall accept or retain employment from or with an unlicensed employer to transact customs business for others than the employer in such manner that the fees or other benefits resulting from the services rendered by the licensed broker for others inure to the benefit of the unlicensed employer.

(i) No licensed customhouse broker shall suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

(m) Each licensed customhouse broker shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the

governmental or other charges properly payable in respect of the client's customs business.

(q) Each licensed customhouse broker shall exercise due diligence in answering correspondence, in making financial settlements, and in preparing or assisting in the preparation of, and filing documents, affidavits, and other papers relating to any matter handled by him as a customhouse broker.

Sec. 11. CANCELLATION OF LICENSES—(a) Tariff Act of 1930, section 641 (a): * * * Any license granted to any such corporation, association, or partnership shall be deemed revoked if for any continuous period of more than sixty days after the issuance of such license there are not at least two officers of such corporation or association or two members of such partnership who are qualified to transact business as customhouse brokers * * *

(c) A customhouse broker's license may be cancelled upon written application to the Committee and surrender of the license certificate, but before granting the request, inquiry shall be made by the Committee to ascertain whether it has been made in order to evade proceedings for revocation or suspension of the license, in which event the request shall be denied, unless the Secretary of the Treasury shall otherwise order.

(f) The federal questions sought to be reviewed were raised below in the following manner and by the methods following:

1. By answer to petitioner's complaint, (Par. 1, P. 30 R) which reads as follows:

"Comes now the defendant, Norman G. Jensen, and for his separate answer to plaintiff's first cause of action alleges and shows to the court:

1. Admits the allegations of Paragraph I of plaintiff's first cause of action, but in that relation this

defendant states that he is informed and believes, and therefore, states the fact to be, that the plaintiff corporation is not now, and never has been, authorized to transact business within the State of Minnesota as a foreign corporation."

2. By petitioner's reply to the answers, (Par. 1, pp. 41 and 42, R) which reads as follows:

"For its reply to the separate answer of the defendant Norman G. Jensen, plaintiff alleges:

I

With reference to paragraph I, it alleges that it has at all times been a corporation, organized and empowered to transact business as a customhouse broker within Customs District #34 of the United States of America, and said district embraces within its boundaries a part of the State of North Dakota and that part of the State of Minnesota, in which Noyes is located. That its license as a customhouse broker is now, and has been, during all times herein involved effective for and throughout said Customs District #34. That the defendants and each of them, have at all times herein involved known and appreciated that the plaintiff has been at all times authorized to do business as a customhouse broker throughout said District No. 34"

3. At the commencement of the trial in the district court of Minnesota for Kittson County, the defendants (respondents here) objected and questioned "the authority of this corporation (petitioner) —— a North Dakota corporation, to sue in the courts of Minnesota by reason of their failure to procure a certificate of authority under the foreign corporation statute of this (Minnesota) state. * * * "

Counsel for petitioner replied to said objection and said:

"I think it may be conceded that the plaintiff corporation has not secured a certificate of authority to do

business in this State. The position of the plaintiff is this, your Honor, that the statute in question does not apply to the plaintiff corporation for the reason that the plaintiff is engaged in interstate commerce and that the statute is not intended to apply to corporations such as this plaintiff." (P. 49, R., lines 3 to 12)

Thereupon the presiding Judge ruled:

"Well, the question is sufficiently doubtful so that I shall reserve the ruling on it at this time and you may proceed with the evidence." (P. 49, lines 14 to 17, R.)

4. On the conclusion of the introduction of evidence by petitioner, counsel for defendants (respondents here) moved the trial court for an order dismissing petitioner's cause of action on the ground that without a certificate of authority issued pursuant to the Minnesota Foreign Corporation Act petitioner was not entitled to sue in the courts of Minnesota. The trial court denied the motion (Pp. 625 and 626 R), and the proceedings had as aforesaid read:

"• • • Plaintiff rests.

Mr. Murphy: Plaintiff having rested, the defendants move that this action be dismissed on the following grounds:

First, it appears of the record that the plaintiff is a foreign corporation, that is, a corporation of the State of North Dakota and is transacting business in the State of Minnesota and has before the commencement of this action without the certificate of authority as required by the laws of the State of Minnesota and is not entitled to sue in the State of Minnesota; • • • (Lines 14 to 26, P. 626 R.)

The Court: The motion will be denied." (Line 8, P. 626 R.)

5. After the case had been submitted to the trial court on the evidence and briefs submitted by petitioner and the

defendants (respondents) the trial court ruled that petitioner could maintain this action in Minnesota notwithstanding the absence of a certificate of authority, and contrary to the contention of the defendants. The facts found by the trial court on that point are stated thus:

> "That the principal function of customhouse brokers, as far as herein concerned, is that of making entry of shipments of goods entering the United States from the Dominion of Canada, paying the customs duty imposed on such shipments, and clearing the same so that they may continue on their course to their ultimate destination with the least possible loss of time; that in making entry shipments are consigned on bills of lading by the shipper to the customhouse broker chosen by such shipper; that a copy of such bill of lading is thereafter delivered to the broker by the carrier or mailed directly to him by the shipper; that upon receipt of such bill of lading by the broker the same is presented to the collector of customs and thereupon the duty due the United States is determined by the collector of customs and paid by the broker, whereupon the shipment is cleared and permitted to proceed to its ultimate destination and consignee; that the customhouse broker, so acting, is considered, for the purpose of making such entry, the actual consignee and acts as the agent of the shipper in making such entry; that in clearing said shipments he aids in the collection of customs duties and facilitates the free flow of commerce between a foreign country and the United States; that the customhouse brokers involved herein, are established as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada." (Par. 5, Pp. 698 and 699 R.)

The trial court ordered judgment in favor of petitioner and against the defendants, and pursuant to said order for

judgment, judgment was entered in this cause in said district court on August 20, 1942. (Fol. 3, P. 721, pp. 722 and 723, and Fol. 1, P. 724 R.)

Defendants (respondents) appealed from said judgment to the Supreme Court of Minnesota on August 21, 1942, and on said appeal assigned the foregoing findings of the trial court as error. The material assignments of error are in words and figures as follows:

I.

"Assignments of Error.

"The findings of fact, conclusions of law, and judgment are contrary to law, in the particulars following:

(a) The Court erred in holding as a matter of law (part of its Finding 5, R. p. 699, f. 1):

'* * * that the customhouse broker, involved herein, are established as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada.'" * * *

(d) The Court erred, as a matter of law, in denying defendants' motion for dismissal of action (exceptions allowed as to all adverse rulings R. p. 288, ff. 1, 2) made upon the conclusion of plaintiff's case (R. p. 625, ff. 2, 3; R. pp. 626, f. 1) as follows:

"Mr. Murphy: Plaintiff having rested, the defendants move that this action be dismissed on the following grounds: First, it appears of the record that the plaintiff is a foreign corporation, that is, a corporation of the State of North Dakota and is transacting business in the State of Minnesota and has before the commencement of this action without the certificate of authority as required by the laws to the State of Minnesota and is not entitled to sue in the State of Minnesota; second, on the ground that the evidence wholly fails to prove or

sustain any of the allegations contained in the plaintiff's complaint; third, we move to dismiss as to the defendant Rime as there is absolutely no evidence in this case which in any way tends to prove or sustain any allegations as to him, it appearing from the record that he never at any time had been affiliated with or employed by or connected with the plaintiff company and was under no obligation or duty of any kind with respect to the same. I want to make that motion for the record at this time."

The other assignments of error assigned by respondents in the Supreme Court of Minnesota are found at pages 754 to 757 down to "certificate" R.

6. The Supreme Court of Minnesota by its opinion dated May 14, 1943, reversed the district court for Kittson County, Minnesota, and held that petitioner could not maintain its said cause of action in the courts of Minnesota without a certificate of authority.

The opinion of the Supreme Court of Minnesota has not been published in the official Minnesota Reports, but is found at p. 721 in Vol. 9, N. W. R. (2nd).

(g) The date of the opinion of the Supreme Court of Minnesota is May 14, 1943.

(h) The date of the judgment entered in the Supreme Court of Minnesota pursuant to said opinion is May 25, 1943.

(i) The Supreme Court of Minnesota is the highest court and the court of last resort in the State of Minnesota. (Sec. 1, Article VI, Constitution of Minnesota; Sec's. 9068 and 9069, Volume 6, Dunnell's Minnesota Digest, Second Edition.)

IV.

Reasons Relied Upon for Allowance of Writ.

1. The decision of the Supreme Court of Minnesota has caused Petitioner great and irreparable injury.

The decision of the district court of Minnesota, supported by incontestible documentary evidence, admissions of the Respondents, and by other credible evidence, ripened into a judgment in favor of Petitioner and against the Respondents whereby Petitioner was awarded damages in the sum of $10324.80, payable immediately and additional relief in the estimated amount of $2500.00 in the form of commissions due on rebates or refunds and of the surrender to Petitioner by the Respondents of usable and useful customhouse brokerage records. By the reversal of that judgment Petitioner is deprived of all that poroperty and in practice, rendered remediless, unless the decision of the Supreme Court of Minnesota is reversed and the judgment of the district court re-instated.

2. Careful investigation and research compel the belief that this is the first case in which this Court has had directly before it the construction of section 1641, Title 19, U. S. C. A., as amended, and the Rules and Regulations of the Treasury Department Relating to Customhouse Brokers, promulgated by the Secretary of the Treasury pursuant to the Tariff Act, as amended, which define the duties and functions of customhouse brokers, their relation to the tariff revenue system of the United States, and to foreign commerce.

3. This appears to be the first case in which this Court, or other United States Courts, have had directly before them for construction the question of whether or not a customhouse broker is an instrumentality, provided for by Congress, employed to protect the national revenue, the im-

porters, and aid in the free flow of commerce between foreign nations and the United States.

4. This also appears to be the first case in which the courts have had directly before them the question of whether or not the business of a customhouse broker is interstate commerce, and if so, if it is "interfered with", or "burdened" by such restrictive requirements as those imposed by the Minnesota Foreign Corporations Act, and used in this case to deny Petitioner access to the courts of Minnesota.

5. This case is of the utmost importance to the Federal Government, and particularly to the Department of the Treasury. The decision of the Supreme Court of Minnesota, if it be allowed to become a precedent, affects, at least indirectly, the efficient control by the United States over the customhouse brokers and the customs collections in all of the 48 customs collection districts at the 307 ports of entry because if the services required of a customhouse broker do not help to protect importers, the revenue of the United States, and facilitate the free flow of commerce between the United States and the Dominion of Canada, the Treasury Department has lost effective control of the instrumentality, authorized by Congress, and heretofore relied on by the Federal government as one of the efficient means for protecting the public revenue and foreign commerce. Thus, this case is a test case which, while of great importance to Petitioner, is of the utmost importance to the customhouse brokers generally and the Government of the United States in particular.

6. This decision of the Supreme Court of Minnesota appears to be in direct conflict with its own prior decisions on the subject of what constitutes "commerce", and what constitutes a "burden" or "obstruction" to interstate and foreign commerce.

7. The decision of the Supreme Court of Minnesota probably conflicts with the decisions of this Court defining "commerce" with foreign nations.

8. The decision of the Supreme Court of Minnesota recognizes that there is involved in this case an important question of Federal law not heretofore ruled on by this Court. This important question of Federal law should be settled by this Court.

9. The decision of the Supreme Court of Minnesota challenges the effectiveness of a license issued by the Federal government and denies its validity and the authority ostensibly conferred thereby on the licensee in a district embracing within its area more than one state because this decision denies to petitioner the privilege and the right to appeal to the courts of Minnesota for the protection of its property in that part of the district which lies in Minnesota.

10. If this decision of the Supreme Court of Minnesota becomes a precedent, an incorporated customhouse broker will necessarily be forced to suffer the burden of qualifying, and keeping qualified, as a foreign corporation in every State of the Union in order that it may protect its property and serve the Government as required by the Laws and Regulations of the Government, for, if Minnesota can exclude from her courts such a customhouse broker on the ground it is without a certificate of authority to do business in the State, then South Dakota, North Dakota and all the other states can do likewise. Failure to comply with such regulations will not only deprive such a customhouse broker of its property but subject it to the severe penalties prescribed by that act.

11. The decision of the Supreme Court of Minnesota indicates that it is probably the result of a confused concept

of the problem involved in the case, and that, but for this confusion, the result would have been different. On p. 737, R., the last complete paragraph thereof, the Court says:

> "The ultimate question in the instant case then is: Did the customhouse brokerage business conducted by plaintiff *in a substantial way interfere with or obstruct the exercise of the granted power of Congress to regulate interstate commerce.*"

Then, beginning with the last paragraph on p. 738, R., 4th line from the bottom of the page, to the end of that paragraph on p. 739, R. the Court says:

> "The broker acts as an independent contractor to perform this personal service for the shipper. He does not come into contact with the commerce itself in any way insofar as its actual movement is concerned. He is at the most an aid or facility to the commerce and but remotely, if at all, affects it. We fail to see how such broker is an instrumentality of the commerce. Therefore, *it seems to us that the statutory requirement is not an obstruction or interference with Interstate commerce.*" (Italics supplied)

This apparent conflict in the understanding of the problem probably accounts for deciding an important question of Federal law in a way apparently in conflict with applicable decisions of this Court.

12. It is submitted that the public interest will be promoted by a prompt settlement in this Court of the questions involved which are vital and important to the Government of the United States, to all customhouse brokers and to Petitioner.

WHEREFORE your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of your Honorable Court directed to the Chief Justice and the Justices of the Supreme Court of the State of Minne-

sota, commanding the Supreme Court of Minnesota and the Justices thereof to certify and send to this Court for its review and determination on a day certain, to be therein named, a full and complete transcript of the record in all proceedings in the case numbered and entitled on its Docket 33388, Union Brokerage Company, a corporation, Plaintiff-Respondent *v.* Norman G. Jensen and Curtis M. Rime, Defendant-Appellants, and that the opinion and judgment of the Supreme Court of Minnesota be reviewed by this Honorable Court and that your Petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just and your Petitioner will forever pray.

LEONARD ERIKSSON,
JAMES S. ERIKSSON,
Counsel for Petitioner,
23-25 Manhattan Building,
Fergus Falls, Minn.

LEWIS L. DRILL,
Of Counsel.

Dated: August 10, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 291

UNION BROKERAGE COMPANY, A CORPORATION,
Petitioner,

vs.

NORMAN G. JENSEN AND CURTIS M. RIME.

BRIEF IN SUPPORT OF THE PETITION.

I.

Opinion Below.

The opinion of the Supreme Court of Minnesota is as yet unreported in the official Minnesota Reports, but it is published in 9 N. W. R. (2), p. 721 and is set forth verbatim in the record beginning at page 727.

II.

Jurisdiction.

A statement as to the jurisdiction of the Supreme Court of the United States is set forth in the petition.

III.

Statement.

A statement of the facts, the questions presented and the reasons relied upon for the issuance of the writ will be found in the petition.

IV.

Argument.

The tariff revenue system of the United States as established by the Tariff Act of 1930, as amended, (19 U. S. C. A.), authorizes the Secretary of the Treasury "to prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character and of corporations, associations, and partnerships, and provides; subject to certain qualifications (not here material), that no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of such statute." Par. 89, Customs Duties, 25 C. J. S., p. 248.

Petitioner is and has been, since 1928 at least, such licensed customhouse broker for United States Customs Collection District #34.

Shipments of merchandise from Canada arriving at a Port of Entry in the United States, can go no further until released from "customs," and to get released an "entry" must be made in accordance with Government regulations. These "entries" are made by the customhouse broker because he is the "consignee" or the importer of the shipment for purposes of clearance. As such he is responsible to the Government for the payment of the duty assessed, excepting certain situations not here material.

The theory behind this arrangement is stated in Sec. 97, "Customs Duties", 25 C. J. S. p. 254 in this language:

> "In order to prevent frauds on the revenue through collusive transfers, and to save the government the

trouble and inconvenience of hunting up the ultimate consignee, it has from the earliest acts been provided that an importation shall, for the purposes of the tariff acts, be deemed and held to be the property of the person to whom the same is consigned, unless the consignment is unauthorized, even though the holder is but a customhouse broker or a forwarder."

The customhouse broker is licensed by the Government to hold himself out generally in matters of trade, commerce and navigation for the protection of the revenue of the United States and for the welfare of the importers. The duration of this right to do business as a customhouse broker is subject to the right of revocation by the Secretary of the Treasury, who, however, must act in accordance with established rules in revoking a license once granted.

This, generally speaking, is and has been the nature of petitioner's business and activities. Its business activities are therefore intimately interwoven with the nation's foreign commerce. As customhouse broker, Petitioner receives shipments from Canada destined for some point in the United States at the Port of Entry, gets them inspected by the Collector of Customs, gets the duty assessed, and paid, the shipments released from the Collector's custody, and gets them released for transportation by carrier to the ultimate consignee.

Petitioner maintains that this business, and the duties connected therewith, is "commerce" within the purview of cl. 3, sec. 8, Art. I of the Constitution of the United States, and that the control thereof rests exclusively in Congress.

The law is settled that states cannot exercise control over interstate or foreign commerce "without the assent of Congress."

Leisy v. *Hardin*, 135 U. S. 100, 119, 34 L. ed. 128, 136,

Brown v. *Maryland*, 12 Wheat. at 419, 6 L. ed. 678, 688.

The power of Congress over foreign and interstate commerce tolerates no encroachments by the State.

Pensacola Telegraph Co. v. *Western Union Tel. Co.*, 96 U. S. 1; 24 L. ed. 708, 710.

In the instant case the merchandise, transported from Canada arrives at the Port of Entry subject to inspection and "clearance" of customs. It did and could not, come to rest, or become commingled with the property of the State, until the services of the Petitioner as customhouse broker had been prformed and until that service was performed the Federal power protected the business and commerce. These services are essentially an adjunct to the system of importations and foreign commerce. In such situations "the strong arm of the government may be put forth to brush away all obstructions to the freedom of interstate commerce or the mails."

In re Debs, 158 U. S. 564, 39 L. ed. 1092, 1102.

The United States has property in the goods imported from Canada reaching a Port for clearance, namely the appropriate duty. That property of the United States is realized and appropriated through the services rendered by the licensed customhouse broker.

It is true, of course, that the broker has no physical contract with the shipments at the place of their origin. That is, he does not furnish the goods; he does not load the goods onto the freight cars, and he does not procure the bills of lading or the waybills at the point of origin; but the exporter and the importer, jointly or severally, designate him as the consignee in the bill of lading and without his services these shipments cannot get out of the Port of Entry to proceed to their ultimate destination. His compensation, it is also true, is not paid by the United States. That is no criterion. However, the same source from which the duty due the United States is paid is the source of his compensa-

tion. The merchandise, moving in foreign commerce, yields his fee just as it yields the duty to the Government.

Assuming, then, that the broker's business is so related to commerce with foreign nations as to be subject to control by Congress, the question arises:

Are the restrictive provisions of the Minnesota Foreign Corporations Act a "burden" on, or an "interference with" commerce which cannot be tolerated.

> "'Burden' means anything that imposes therewith a restrictive or onerous load upon such commerce."
>
> *State of Missouri* v. *Kansas Natural Gas Co.*, 282 Fed. 341, 345.

> "A corporation of the state may go into another for all legitimate purposes of interstate commerce without the leave of the latter state, and any statute of such state obstructing or laying a burden on the exercise of such privilege is void under the commerce clause."
>
> *Dahnke-Walker Milling Co.* v. *Bondurant*, 42 S. ct. 106, 257 U. S. 282, 66 L. ed. 239, reversing 215 S. W. 76, 185 Ky. 386.

This Dahnke-Walker Milling Company case is quite amalgous to this instant case because there, as here, the defense interposed was to the effect

> "that the plaintiff had not complied, as was the fact, with the Statute of Kentucky (Ky. Stat. 1915, Par. 571) prescribing the conditions on which corporations of other states might do business in that state and that the contract was therefore not enforcible. To this the plaintiff replied that the only business done by it in Kentucky consisted in purchasing wheat and other grain in that state for immediate shipment to its Tennessee mill and then shipping the same there; that the contract in question was made in the course of this business and with the purpose of forwarding the wheat to the mill as soon as it was delivered on board the cars; that this transaction was interstate commerce and as

to it the statute of Kentucky, whose application was involved by the defendant, was invalid because in conflict with commerce clause of the Constitution of the United States."

In the instant case the only business done by petitioner in Minnesota consisted in "clearing" importations from Canada into the United States and paying or assuming the liability for paying the duty on those importations to the Government of the United States.

In the case of *Furst* v. *Brewster*, 282 U. S. 493, 75 L. ed. 478, 481, the court says:

> "Such commerce comprehends all the component parts of commercial intercourse between different States, and according to established principle, any State statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the commerce clause. (Several citations). Accordingly, when a corporation goes into a State other than that of its origin to collect, according to the usual prevailing methods, the amount which has become due in transactions in interstate commerce, the State cannot, consistently with the limitation arising from the commerce clause, obstruct the attainment of that purpose. (Citations.)

See also:

Butler Bros. Shoe Co. v. *U. S. Rubber Co.*, 156 Fed. 1; 84 C. C. A. 167, certiorari denied, 212 U. S. 577, 53 35 L. ed. 649.

Lemke v. *Farmers Grain Co. of Embden*, 42 S. Ct. 244, 258 U. S. 50, 66 L. ed. 458, 464.

Puget Sound Stevedoring Co. v. *Tax Commission of State of Washington*, 58 S. Ct. 72, 302 U. S. 90, 82 L. ed. 68, modifying 63 P. (2) 532, 189 Was. 131.

"Commerce" as used in cl. 3, sec. 8, Art. I of the Constitution of the United States is not limited to the sale or ex-

change of commodities, but includes all the acts, instrumentalities, and dealings that directly bring about the sale or exchange of goods and "the control of importation does not rest with the State but with the Congress."

Brown v. *State of Maryland*, supra.
Board of Trustees of University of Illinois, U. S. 53 S. Ct. 509, 289 U. S. 48, 77 L. ed. 1025, 1029.

The restrictive provisions of the Minnesota Foreign Corporations Act do burden interstate and foreign commerce. First, we have the provision that no foreign corporation may maintain an action in the State until it shall have obtained a certificate of authority by complying with its provisions.

Next, this statute provides a penalty of $1000.00 and an additional penalty of $100.00 for each month or fraction thereof during which such corporation shall continue to transact business in Minnesota without a certificate. The application for the license or certificate of authority specify 10 requisites, and at the time of making the application, an initial fee of $50.00 must be paid. A registered office and a registered agent must be provided for, and annually between January 1 and April 1 reports, as defined, must be made and filed with the Secretary of State.

Obviously a corporation, such as petitioner, believing it to be aiding the nation's foreign commerce, and the collection of its revenue, may do business for several years in the belief that it is not amenable to this Act as was the case here. As a result thousands of dollars in penalties may accrue to become a sudden and destructive liability.

Other states have similar provisions.

The business of the broker extends into every State of the Union because shipments from Canada are bought by persons in every State.

Petitioner believes it is protected from this burden, and respectfully represents that the following decisions apply:

Crutcher v. *Commonwealth of Kentucky*, 141 U. S. 47, 35 L. ed. 649.

Sioux Remedy Co. v. *Cope*, 235 U. S. 197, 59 L. ed. 193.

Petitioner's business and activities are intimately related to and a part of the nation's foreign commerce.

Stafford v. *Wallace*, 258 U. S. 495, 66 L. ed. 735 applies.

Under the Minnesota decision, if allowed to become a precedent, Petitioner, and any other broker organized as a corporation, would have to qualify, and keep qualified, in all of the States in order that it might protect its property.

To illustrate:

One day the broker "clears" a shipment of lumber originating in British Columbia, and destined for Minneapolis. He relies on the financial standing of the importer and advances the duty required by the Collector. The sum advanced is $500.00.

The next day he clears a shipment of seed for an importer domiciled in Chicago, and again advances the duty in the amount of $1500.00.

It is immaterial, of course, whether he originally advances it or not because he is liable for any error committed, and if an error is discovered the next month or the next 5 years, he is required to pay, as the Collector is immune.

The importer either does not understand, or he is slow, so that the broker must pay or suffer liability under his bond.

He finds himself unable to collect within the time allowed or without bringing an action. The amount advanced is insufficient for suit in the District Court of the United States. Under the Minnesota decision, if allowed to become a precedent, he must qualify in each of those States, or be compelled to suffer the loss.

It is therefore respectfully submitted that the provisions of the Minnesota Foreign Corporations Act is a burden and an interference with "commerce."

The respondents admitted the interstate or foreign commerce feature of the broker's business. Norman G. Jensen testified:

> "Q. And so to make this attempted investigation clear and simple, a customhouse broker is rendering services to both the government of the United States and the importer, isn't that right?
>
> A. That is right.
>
> Q. And that is all his business?
>
> A. No, he renders service to exporters.
>
> Q. All right, we'll add that to it—is that all of his services?
>
> A. It is all I can think of right now." (F. 1, p. 65. R.)

Mr. Phillips, cashier of the Soo and Great Northern Railways at the Port of Noyes, testified:

> "Q. When goods come from across the border, subject to entry here in the United States, what is done by the railway or by you?
>
> A. The papers are stripped, that is, the bill of lading and invoices and other papers. * * *
>
> The papers that the—that accompany the shipment to be delivered to the customs broker. * * *
>
> The papers are usually attached to the way-bill for the car. The way-bill is the instructions to the railroad for the conductor handling the car.
>
> Q. And when a car containing a shipment of merchandise into the United States from abroad—what is done with those papers?
>
> A. They are delivered to the customs broker to whom they are consigned. * * *
>
> If the bills of lading fail to show a broker consignee the car is refused, and the station personnel notify "the connecting line * * * or the line that delivered it to the railroad line on this side of the boundary." (Ff. 1, 2, p. 383, 384, 385 R.)

Mr. Mackey testified that the Collector

> "Doesn't deliver the bills of lading (to the broker); he delivers one copy of the invoice and a note on the back in some way that he has authority to clear that shipment, then the inspector goes out and makes an inspection of the shipment and the shipment is released, and, as far as the railroad is concerned, it goes forward." (Ff. 2, 3, p. 575, R.)

Conclusion.

Upon these facts and authorities it appears that the Supreme Court of Minnesota committed error by reversing the judgment of the district court and by holding that the Petitioner is not engaged in interstate commerce nor an instrumentality employed to protect the revenue of the United States and to aid in the free flow of foreign commerce.

The decision of the Supreme Court of Minnesota is contrary to the applicable decisions of this Court.

The decision of the Supreme Court of Minnesota has caused Petitioner irreparable injury.

The case at bar is of vital importance not only to Petitioner, but also to all other customhouse brokers and to the Government of the United States.

The decision of the Supreme Court of Minnesota is erroneous and should be reversed.

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